

Court No. 17

WPA 12266 of 2021

09.02.2022

(AD 121)

(S. Banerjee)

Sandeep Prasad & Ors.

Vs.

The State of West Bengal & Ors.

with

CAN 1 of 2021

CAN 2 of 2021

CAN 3 of 2021

CAN 4 of 2021

CAN 5 of 2021

(Via Video Conference)

Mr. Sudipta Dasgupta

Mr. Bikram Banerjee

Mr. Arkadeb Biswas

Ms. Dipa Acharyya

....for the petitioner

Mr. Bhaskar Prasad Vaisya

Mr. Joydip Banerjee

... for the State

Dr. Sutanu Kumar Patra

Ms. Supriya Dubey

Ms. Deblina Chakraborty

... for SSC

Ms. Koyeli Bhattacharyya

...for WBBSE

(1) The petitioners filed this writ application alleging that other candidates from the rank below them were recommended by the School Service Commission for appointment to Group D posts in different schools. Candidates who were not in the list were recommended by the Commission to such posts. Candidates who were not even either of the panel and the waitlist, were recommended by the Commission for appointment in such posts.

(2) During the course of hearing it was found that the 25 candidates who were named in the supplementary affidavit affirmed by the petitioners on 17th November, 2021, all were recommended after the month of September, 2019. Some persons were also recommended in the year 2021.

(3) In this regard the petitioner also referred to one notification issued by the Commission (which is at page 55 of the writ application) stating that the panel and waitlist in relation to the 3rd RLST (NT), 2016 for recruitment to the post of Clerk and Group D in aided/sponsored secondary and higher secondary schools, expired on 18th May, 2019 and 4th May, 2019.

(4) After expiry of the panel there could be no reason for recommending candidates to any vacancy. It has already come on record from the above mentioned supplementary affidavit of the petitioners affirmed on 17th November, 2021, that in the Group D post the 25 candidates, named in the table under paragraph 3, were recommended after September, 2019. Some were also recommended in the year 2021.

Panel expired in May 2019.

(5) In this respect the Commission by filing one affidavit affirmed on 18th November, 2021,

(with entry no. S 33522) has submitted that no recommendation letter after the expiry of the panel was issued by the Regional Commission. The Group D staff are recommended by the Regional Commissions.

(6) Subsequently the petitioners by another supplementary affidavit, affirmed on 15th December, 2021, disclosed 548 persons names, all of whom were allegedly recommended by the Commission after the expiry of the panel, mostly in the month of December, 2019, in respect of which the statement made by the Commission in their aforesaid affidavit dated 18th November, 2021, holds good where the Commission has stated that none of its regions issued recommendation letters after expiry of the panel on 4th May, 2019. Such statement appears from a conjoint reading of paragraphs 6 and 9 of the said affidavit of the Commission dated 18th November, 2021.

(7) Subsequently, the Commission filed one affidavit affirmed on 22nd December, 2021 dealing with the writ application on merit stating that the writ application is delayed. The petitioners had no grievance with regard to the recommendations made to the candidates referred in the writ application. No where it appeared from the writ application that the petitioners prayed for an inquiry. And

all these factors, put together, indicates that the petitioners have no grievance with regard to the candidates referred to and the petitioners should not be allowed to modify their case made out in the writ application. In respect of the prayers made by the petitioners the Commission stated in its affidavit in opposition affirmed on 22ⁿ^d December, 2021 that the petitioners could not be called in the counseling for remaining 108 vacancies as after recommending the candidates from the panel and the waitlist, 108 vacancies were left from the vacancies declared by the Commission.

(8) The statements made by the Commission in its affidavit (affirmed on 18th November, 2021) stating that the Commission did not recommend any such candidate after the expiry of the panel, is contradictory to the tenor of the affidavit in opposition of the Commission where they have raised all the above points to oppose the writ application.

If the recommendations were not issued by the Commission after the expiry of the panel for Group D posts, how does it matter to the Commission whether the petitioners did not say something about the candidates who were admittedly not recommended by the Commission? Is the commission trying to defend illegality and corruption exposed?

(9) In any event after the filing of the writ application and the affidavit of the Commission stating clearly that no recommendation was made after expiry of the panel, read with the tabular statement given by the petitioners in their supplementary affidavit affirmed on 15th December, 2021 in relation to 548 candidates after the aforesaid 25 candidates show that there is a clear case of illegality, irregularity and corruption in appointment of such 25 candidates and thereafter 548 candidates (if not other candidates also whose particulars have not been given by the petitioners).

(10) In view of such illegality, irregularity and indication of mind boggling corruption in public appointment in schools, where salaries are paid from the public exchequer, a writ court, being a court of equity cannot turn a blind eye to the facts which have come before it by way of affidavits.

(11) Therefore, the bottom line is that the 25 candidates, named in one supplementary affidavit and subsequently the 548 candidates, named in another supplementary affidavit disclosed by the petitioners, are clearly hit by Section 9 of the West Bengal School Service Commission Act, 1997.

(12) Section 9 of the West Bengal School Service Commission Act, 1997 is quoted herein below:

9. Effect of recommendation of Commission.-

(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, appointments to the posts of the Teachers and non-teaching staff in school shall be made by the Board or the Ad-hoc Committee or the administrator of the Board on the recommendation of the Regional Commission having jurisdiction.

(2) Any appointment of a Teacher or a non-teaching staff made on or after the commencement of this Act in contravention of the provisions of this Act shall be invalid and shall have no effect and the Teacher or the non-teaching staff so appointed shall not be a Teacher or a non-teaching staff within the meaning of clause (p) or clause (ia) of section 2, as the case may be.)

This Section of the Act deals with effect of recommendation of Commission. In Section 9(1) it is stated inter alia that appointments to the posts of teachers and non-teaching staff in schools shall be made by the Board or the ad hoc committee or the administrator of the Board **on the recommendation** of the Regional Commission having jurisdiction notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary. Therefore, unless the Commission recommends a person to the post of a teacher or a non-teaching staff, the Board cannot issue any appointment letter.

(13) However, the Board in one of its affidavits have clearly submitted that they have issued appointment letters to the candidates, mentioned in the above supplementary affidavits of the petitioners, on the basis of the recommendations of the Commission. This is a sore point which is required to be inquired.

(14) As there was admittedly no recommendation by the Commission to those 573 (25 + 548) candidates named in those two supplementary affidavits used by the petitioners, the appointment letters given by the Board, under whatever situation, do not have any effect.

(15) This is exactly what which has been stated in Section 9(2) of the Act, which has been quoted above. From Section 9(2) of the said Act it appears that if any appointment of a teacher or a non-teaching staff is made on or after the commencement of the said Act (the Act came into effect in the year 1997) in contravention of the provisions of the Act, shall be invalid and shall have no effect and the teacher or the non-teaching staff within the meaning of clause (p) or clause (ia) of Section 2 of the Act, as the case may be shall not be a teacher or non-teaching staff.

Clause (ia) of Section 2 of the said Act defines non-teaching staff.

(16) From the above provision of the Act, it is clear that the appointment of the said 573 candidates are wholly invalid and have no effect for want of recommendation by the commission and, therefore, they cannot work in a school as a recommended candidate by the Commission and their appointment letters of the Board are of no effect. All such appointments given to such 573 candidates are invalid and of no effect.

(17) The concerned District Inspectors of Schools are directed not to pay any salary to those 573 candidates who were not recommended by the Commission any further and the salary paid to such persons by the District Inspectors of Schools or from any other public fund are to be realised from them by using the relevant laws, both civil and criminal, in this respect.

(18) Those 573 persons have been served with copies by the Commission and the Commission has intimated me on the last occasion that they have sent copies of the writ application through speed post along with all the affidavits.

(19) Today at the time of hearing no such candidate has appeared to make any submission before this court. However, they are not shut out from making the most relevant statements on affidavit individually, of

course by disclosing the following questions within a period of three weeks from the date of this order:

- i) From whom he received the recommendation letter – the name and designation of the persons who handed it over to him or who sent it by post to him.
- ii) From whom he received the appointment letter – the name and designation of the person who handed it over to him or who sent it by post to him.
- iii) What is the total amount of salary he has received from the date of appointment till date.

Such affidavits, if filed at all, by the candidates individually is to be filed before 2nd March, 2022.

(20) This court initially by its order dated 22nd Noveber, 2021 directed for an investigation by CBI by constituting a committee including enquiry into the question of money trails, if any, involved with such type of corruption whereunder without recommendation letters some persons were appointed in schools as Group D staff.

The Division Bench on appeal against this judgement constituted a committee headed by one retired judge of this court and three other members named in the said order.

(21) Today none of the committee members or none on behalf of the committee is present before this court for the reasons best known to them.

I am told that an application has been filed before the Division Bench in the disposed of matter, i.e., the disposed of appeal, for extension of time to file the report by four months. As the application has been filed before the Division Bench, I restrain myself from making any comment thereon.

(22) However, I direct the committee to file an interim report before this court on 14th February, 2022 as to the stage they have proceeded in inquiry of the corruption and the angle of money trail, if any, till date.

(23) The appeal court mandated the committee to file the report by two months from the date of the order of the appeal court. The order of the appeal court was passed on 6th December, 2021. Today we are on 9th February, 2022. Although the said mandatory period of two months have elapsed, not only no inquiry report has been submitted before this court but also nobody of the committee, or on behalf of the committee, did care to appear before this court. This non-appearance is taken very very seriously by this court.

(24) I direct the committee to disclose the minutes of the minutes of all the meetings conducted by the committee in the meantime, i.e., from the order of the appeal court till 6th February, 2022 along with the said report. Those minutes shall be in a sealed cover whereas the interim report will be filed openly in court.

(25) Learned advocate for the petitioners is directed to serve a copy of this order upon the said Hon'ble Judge (retired), who was given the responsibility to monitor the enquiry for which the team was constituted by the appeal court.

Learned advocate for the petitioners prays for supply of the address of the said Hon'ble Judge (retired) who was to monitor the committee which he does not know.

(26) I direct the learned Registrar General to supply the address of the said Hon'ble Judge (retired) in course of the day to the learned Advocate for the petitioners in writing.

(27) This matter will appear in the list for further hearing on 14th February, 2022 at 12 noon.

(28) For the information of the above referred 573 candidates this order shall be published in the official website of the commission.

(Abhijit Gangopadhyay, J.)